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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

KRISTINE L. ADAMS,

Plaintiff and Appellant,

v.

NEWPORT CREST HOMEOWNERS
ASSOCIATION,

Defendant and Respondent.

G053984

(Super. Ct. No. 07CC01390)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, William D. Claster, Robert J. Moss and Nancy Wieben Stock (retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.), Judges. Affirmed.

Law Offices of Nigel Burns, Nigel Burns, Farzad Seyfnia and Brandon Wyman for Plaintiff and Appellant.

Grant, Genovese & Baratta, James M. Baratta, Lance D. Orloff, Jeffrey P. Magwood and Jennifer N. Kaufman for Defendant and Respondent.

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This is the fifth appeal in this seemingly unending dispute between plaintiff Kristine L. Adams and defendant Newport Crest Homeowners Association (Newport Crest), which has been ongoing since 2005. In this particular iteration, a trial took place, and the jury awarded Adams \$142,599 in damages. Adams thereafter filed a motion seeking a new trial, which was denied. Adams now appeals on various grounds, many of which are waived due to inadequate briefing. With respect to the remaining issues, we find no error and affirm the judgment.

On our own motion, we served Adams with an order to show cause (OSC) regarding sanctions under the California Rules of Court. After briefing and argument, we exercise our discretion not to impose sanctions.

I FACTS

Where to begin this never ending story? Our prior opinions can be read in full at *Adams v. Newport Crest Homeowners Association et al.* (Sept. 9, 2009, G039956) [nonpub. opn.] (*Adams I*); *Kristine L. Adams v. Scott L. Ghormley et al.* (Feb. 8, 2011, G040728) [nonpub. opn.] (*Adams II*); *Kristine L. Adams v. Newport Crest Homeowners Association et al.* (Mar. 13, 2012, G044230) [nonpub.opn.] (*Adams III*); and *Kristine L. Adams v. Newport Crest Homeowners Association et al.* (Aug. 16, 2012, G045590) [nonpub. opn.] (*Adams IV*). We summarize the prior proceedings and additional facts relevant to this appeal below.

A. *Adams I*

As we stated in *Adams I*: “[Adams] brought suit against Newport Crest Homeowners Association and certain others (collectively, Newport Crest), in connection with alleged mold, biological contamination, water intrusion, structural damage, termite and rat infestation, and other issues affecting her condominium unit The parties

went to mediation and ultimately signed a settlement agreement [(the settlement agreement)], which entailed the payment to Adams of \$500,000 from Newport Crest's insurance carrier, and a commitment to perform extensive remediation of her unit within an anticipated 90-day period. The insurance payment was made, but Adams claimed Newport Crest failed to comply with its nonmonetary performance obligations." (*Adams I, supra*, G039956.) This case, filed in 2005, was Orange County Superior Court No. 05CC05516 (the first lawsuit).

As part of her duties with respect to the settlement agreement, Adams was required to release "all of her claims of any type, specifically including any bodily injury, emotional distress, personal property damage (except as described below) or other damages or injuries (hereinafter 'released claims') EXCEPT specifically those items enumerated below." The items referred to were "ongoing claims pertaining to the repairs and remediation of her home and property to the extent stated herein and specifically in Paragraph 13. Nor does the Plaintiff release the Defendants for her claims of additional living expenses during the time the repairs and remediation are being performed and completed." Paragraph 13 provided for Newport Crest to pay Adams \$3,500 per month additional living expenses, and stated the \$500,000 settlement "does not include any payment for claims of loss of past or future earnings or wages by Plaintiff, all of which are also being dismissed. Payment of said monetary settlement shall be in consideration for the immediate dismissal with prejudice of all claims and causes of action for personal injuries, loss of earnings, emotional distress, pain and suffering and the like of all the Defendants herein."

As to the remediation itself, the settlement agreement stated that Adams would give access to Newport Crest's vendors, including "Angus Smith Construction, Environmental Testing & Technology, Inc., Anthony Salazar, and Alliance Environmental Group, for the purposes of making repairs and fully abating the water/moisture intrusion issues along with remediating the home of contaminants and

clearing it for rehabilitation. . . . The repairs and abatement measures referenced in this agreement shall include the repair and abatement measures advocated by the defendants' construction expert, Anthony Salazar”

We need not go into the specifics of the work listed, but the settlement agreement included a lengthy and specific list that included repairs to drywall, decks, doors, drainage, moisture intrusion, heating system, sewer, and the interior. Newport Crest was also responsible for all costs related to packing Adams's personal property and having it removed during the remediation. Newport Crest was also responsible for post-remediation inspections.

In the first lawsuit, “Adams filed a Code of Civil Procedure section 664.6¹ motion to enforce the terms of the settlement agreement and to order Newport Crest to perform its obligations thereunder, and Newport Crest thereafter filed an ex parte application for an order enforcing the settlement agreement and compelling mediation. Finding that the settlement agreement required disputes thereunder to be returned to mediation, the court denied Adams's motion and granted Newport Crest's application. However, Adams did not respond to Newport Crest's request to schedule a mediation. The court, on its own motion, set an order to show cause re dismissal. After a hearing on the order to show cause, the court ordered Adams's case dismissed.” (*Adams I, supra*, G039956.) We found substantial evidence to uphold the court's finding that the parties had entered into a binding settlement agreement. We ultimately affirmed the dismissal and numerous other related orders. (*Ibid.*)

B. Adams II

Adams II related to a second, subsequently filed lawsuit by Adams in 2007, Orange County Superior Court No. 07CC01390 (the second lawsuit). This case named

¹ All further undesignated statutory references are to the Code of Civil Procedure.

15 parties, including the attorneys for Newport Crest and its managing agents. (*Adams II*, *supra*, G040728.) “The suit primarily arose out of the settlement agreement in the first lawsuit, but also folded in certain residual issues concerning continued mold and other problems in connection with her condominium unit and personal property. Adams asserted 15 causes of action, 13 of which pertained to the legal counsel defendants, as well as others.” (*Ibid.*) The three attorney defendants filed a demurrer, motion to strike, and special motion pursuant to section 425.16 (the anti-SLAPP statute). The trial court sustained the demurrers and granted the anti-SLAPP motions, which were the subject of the appeal in *Adams II*. We ultimately affirmed.

C. Adams III

After we affirmed the trial court’s rulings in *Adams I*, Newport Crest filed a motion for attorney fees in the first lawsuit, which the trial court granted. (*Adams III*, *supra*, G044230.) We affirmed. (*Ibid.*)

D. Adams IV

Adams IV concerned the second lawsuit referred to in *Adams II*. While the appeal in *Adams II* related to the attorney defendants, *Adams IV* was in regard to a demurrer filed by Newport Crest in 2008. “Newport Crest argued that Adams’s many causes of action essentially boiled down to two legal claims—fraudulent inducement to enter into the settlement agreement and breach of the settlement agreement. The first set of claims, it argued, was barred by the litigation privilege. The second set of claims, Newport Crest asserted, had already been fully adjudicated in [the first lawsuit].” (*Adams IV*, *supra*, G045590.)

Adams represented to the court, via a status conference statement, that she had lost her home through nonjudicial foreclosure in 2009, and she had been unable to refinance due to a lien Newport Crest had recorded against the property. She argued the

settlement agreement had obligated Newport Crest to release the lien, but it had failed to do so. (*Adams IV, supra*, G045590.) During this period, the court ordered the first lawsuit and the second lawsuit consolidated, and deferred hearing the demurrer until we decided *Adams I* and *Adams II*. (*Ibid.*)

After we issued those opinions, the court heard argument on the demurrer. “Adams represented to the court that she had lost her home and that Newport Crest had not returned her personal property. She further represented that after our decision in [*Adams I, supra*, G039956] had been filed, the parties went to mediation . . . but the matter was not resolved. Given the changed facts, Adams argued that the demurrer was ‘outdated.’” (*Adams IV, supra*, G045590.)

The court ultimately sustained the demurrer without leave to amend. (*Adams IV, supra*, G045590.) “It observed that Adams’s 15 causes of action were based on two general grievances—the negotiation of the settlement agreement and the performance of the settlement agreement. It held that the causes of action based on the negotiation of the settlement agreement were barred by the litigation privilege. It further held that to permit Adams to proceed with her second lawsuit would be to reward her for ignoring the settlement agreement provision requiring her to submit any disputes to mediation before pursuing a judicial resolution.” (*Ibid.*) Ultimately, we concluded the second lawsuit was not barred by either issue preclusion or the litigation privilege, and reversed. We held that “Adams shall be permitted to amend her complaint to frame causes of action based on postsettlement conduct and the current state of facts.” (*Ibid.*)

E. The Fourth and Fifth Amended Complaints

After remand, in March 2013, Adams filed her fourth amended complaint. She alleged causes of action for (1) breach of contract, (2) breach of implied covenant of good faith and fair dealing, (3) infliction of emotional distress, (4) breach of fiduciary duty, and (5) fraud and deceit. Named as defendants were Newport Crest, its two

management companies, its board members, and an individual named as “trustee.” (We continue to refer to the defendants collectively as Newport Crest, unless otherwise indicated.)

Newport Crest filed a demurrer, arguing, as relevant here, that Adams did not plead sufficient facts to support the cause of action for breach of fiduciary duty. Adams’s opposition asked for leave to amend if the court was inclined to sustain the demurrer, but did not offer what specific facts she might add. Newport Crest’s motion to strike included a request to strike Adams’s request for punitive damages.

At oral argument, the court asked what facts Adams had to establish a claim for breach of fiduciary duty. Adams responded that Newport Crest’s obligations arose from the settlement agreement, for example, failing to return her property and failing to complete the repairs. The court repeatedly questioned Adams (a licensed attorney, she was representing herself at the time) as to whether the acts she alleged constituted the breach of duty were essentially the same acts she alleged as the breach of contract. Adams did not provide a clear answer, but also did not indicate any acts outside the scope of a breach of contract.

In its ruling in May 2013, the court sustained the demurrer to the causes of action for breach of implied covenant of good faith and fair dealing, breach of fiduciary duty and fraud and deceit without further leave to amend. The court sustained the demurrer with respect to the cause of action for intentional infliction of emotional distress with 21 days to amend. The demurrer to the cause of action for breach of contract was sustained as to all parties except Newport Crest and the two management companies. The court also granted the motion to strike as to punitive damages with 21 days to amend. Various other procedural maneuvers (including a motion for reconsideration and a writ petition to this court) followed, all of which were unsuccessful.

Adams filed a fifth amended complaint on June 28, 2013, alleging breach of contract and intentional infliction of emotional distress. Again, a demurrer and motion

to strike followed, and the court eventually sustained, without further leave to amend, the demurrer as to the intentional infliction of emotional distress cause of action.

Accordingly, the motion to strike alleging punitive damages was stricken. The only cause of action remaining in Adams's complaint was the claim for breach of contract.

The court stated: "As the Court has noted before, the Parties are in a contractual relationship arising out of the Settlement Agreement and nothing more; they are not in any type of special relationship where Defendants owe Plaintiff any special obligation or duty other than contractual." Defendants subsequently answered. Much activity followed between this point and just before the start of the trial, but we need not discuss it here.

F. Motions in Limine

Prior to trial, the court heard numerous motions in limine. We will discuss them further below, but suffice to say that the court generally limited the evidence Adams could present at trial to contractual damages that arose from the settlement agreement.

The court also found the proper measure of damages for harm to Adams's property was either diminution in value or the cost of repairs that were not completed. The court excluded evidence that the property was lost in foreclosure, deeming it irrelevant. On the numerous motions related to whether Adams was entitled to recover special damages, the court held: "When you get right down to it, this case is a pretty simple case. [Adams] made a deal at the end of a lawsuit, like we do in almost every lawsuit, and they dealt at arm's length. It was a hotly contested—the underlying case was hotly contested. [¶] They made a deal at the end, arm's length, both sides were represented. And if you can prove they didn't live up to their end of the bargain, you get contract damages, not this additional."

The trial court also excluded Adams's claim for loss of income, as it was part of her personal injury claim and not a recoverable item of damages for breach of

contract. Further, the court ruled Adams could not recover lost income or lost business profits stemming from the loss of use of business property.

G. Adams's Testimony

Adams testified at length during trial, including about her discovery of mold and other problems that led up to the first lawsuit and the settlement agreement in 2006. She described entering into the settlement agreement and its basic provisions – that Newport Crest would pay her \$500,000 and remediate her unit, with Salazar designated as the expert who would decide what work needed to be done. Newport Crest would remove her personal property, have it remediated and stored while the home was being repaired, then pay to have it returned.

Adams was to contact the vendors who were going to move her personal property, and testified she did so, and the property was actually removed around January 2007. Adams was required to provide access to the contractors, and testified that she provided a key and a garage door opener after her property was removed. She was notified the key did not work, so she made a replacement key and sent it overnight. Adams testified that a dispute over when access was to begin resulted in Newport Crest withholding the \$3,500 living allowance she was supposed to be paid. She ultimately received that payment for five months.

At the end of February 2007, Newport Crest advised Adams it needed 60 days longer than the settlement agreement provided for it to complete the work on her unit.

In March 2007, Salazar, for the first time, expressed a need for a release of liability and indemnification signed by both parties. Newport Crest's attorney, Carl Stevens, sent a response stating he could not recommend the association sign such an agreement, because the association was the only party agreeing to defend and indemnify. Stevens attached a new proposed agreement, stating: "I took the Plaintiff out of the

contract. She needs to sign a release separate and apart from the retainer agreement/indemnity agreement the HOA signs.” Stevens went on to say: “I think you are fully protected by the HOA indemnification and the release by all the defendants. The changes in the contract make it clear who indemnifies who, who is retaining you and that all the defendants are releasing you. I may not get the other two defendant’s signature until tomorrow but I certainly see no reason for them not to sign it.” Although Stevens never told him this directly, Salazar believed that Adams refused to sign an indemnity agreement with his company. Adams testified she never refused to sign an indemnity agreement. Salazar ultimately decided to leave the project.

Adams asserted that Newport Crest misrepresented that Salazar was still working on the project, and was not informed until April 2007 that Salazar had been replaced with Smith. In the same letter, Newport Crest advised Adams that there was no reason she could not move back into the unit, and had already been provided a copy of “clearance testing.” Newport Crest was prepared to move her personal items back and that the home was considered safe for occupation.

Adams testified she did not find Smith to be acceptable, because he was not a specialist and was not neutral, and that Smith never replaced Salazar in his role. Newport Crest was informed of her objections by a written response to its previous letter, and that she had not been notified or consulted pursuant to the settlement agreement. Smith was kept on. We will add more detail below as necessary, but in sum, Adams testified that none of the repairs and inspections set forth in the settlement agreement were ever performed and completed. She also testified that Newport Crest never did any of the required work on the interior of the unit. Adams also testified that Newport Crest had converted her personal property by failing to pay the vendors for storage. Adams testified that although a Newport Crest lien on her home was supposed to be expunged after the settlement agreement, it was not. Adams also testified on the efforts she took to mitigate her damages, which included hiring her own experts and specialists.

H. Verdict

The jury found in Adams's favor, finding that Newport Crest had failed to "do all, or substantially all, of the significant things that the settlement agreement required it to do." The jury awarded nothing for damage to Adams's real property, but did award \$4,000 in damages to her personal property, \$6,400 for loss of use of her personal property, \$101,500 for unpaid additional living expenses, and \$30,699 in out of pocket costs for mitigation and investigation, resulting in a total judgment of \$146,599. The court later awarded Adams prejudgment interest of approximately \$80,680.54.²

I. Motion for New Trial

Adams moved for a new trial, arguing various errors of law and inadequate damages. The court denied the motion. Adams now appeals. Proceeding under a fee waiver, she designated a record on appeal that exceeds 15,000 pages of clerk's transcript and exhibits, and 1,400 pages of reporter's transcript.

II

DISCUSSION

A. Adams's Briefs

Despite the fact that Adams's opening brief in this appeal is in excess of 13,900 words and 90 pages long, she spends three full pages in her reply brief on "clarifications" on matters about which "the AOB may not have been clear." This is inappropriate. If Adams located errata in her brief, she should have corrected it at the earliest possible date rather than waiting until her reply brief and denying Newport Crest any opportunity to respond. (See *Schubert v. Reynolds* (2002) 95 Cal.App.4th 100, 108-

² Offsets from settlements with other defendants were deducted from the judgment pursuant to section 877.

109.) To the extent Adams attempts to introduce new facts, or different versions of facts, in her reply brief, we disregard them.³

As we will discuss below, many of the argument sections of Adams's opening brief are plagued by problems. She fails to acknowledge the undisputable fact that as appellant, she bears the burden of demonstrating reversible error with adequate citations to the record, reasoned argument and citations to authority. Many of her "arguments" are simply statements about what she thinks went wrong for her in the trial court, without sound legal reasoning or arguments about reversible prejudice.

B. The 2013 Demurrer

Adams's first argument is that the trial court, in 2013, erred by sustaining Newport Crest's demurrer to her tort claims. As we noted above, in May 2013, the court sustained Newport Crest's demurrer to the causes of action for breach of implied covenant of good faith and fair dealing, breach of fiduciary duty and fraud and deceit without further leave to amend, finding Adams had failed to state facts sufficient to set forth a cause of action. Adams argues that the court erred when it decided, according to Adams, that "no fiduciary or common-law duties existed."

"In our de novo review of an order sustaining a demurrer, we assume the truth of all facts properly pleaded in the complaint or reasonably inferred from the pleading, but not mere contentions, deductions, or conclusions of law. [Citation.] We then determine if those facts are sufficient, as a matter of law, to state a cause of action under any legal theory." (*Intengan v. BAC Home Loans Servicing LP* (2013) 214 Cal.App.4th 1047, 1052.) "In order to prevail on appeal from an order sustaining a demurrer, the appellant must affirmatively demonstrate error. Specifically, the appellant

³ It does not help that Adams's reply brief follows no logical organizational principle, and often fails to cite to her opening brief to assist us in connecting the arguments she is attempting to offer.

must show that the facts pleaded are sufficient to establish every element of a cause of action and overcome all legal grounds on which the trial court sustained the demurrer. [Citation.] We will affirm the ruling if there is any ground on which the demurrer could have been properly sustained.” (*Ibid.*)

We begin with the parameters of what we have already decided. In *Adams IV*, in which we discussed the deficiencies with Adams’s then-operative complaint at some length, we remanded to allow her to amend her complaint “to frame causes of action based on *postsettlement conduct* and the current state of facts.” (*Adams IV, supra*, G045590, italics added.) Thus, as we hope is abundantly clear, the issue of whether Adams could bring any causes of action for conduct predating the settlement had already been resolved against Adams.

This clearly resolved an issue that Adams raises repeatedly – the claim that what she refers to as a “reservation of claims” in the settlement agreement should have saved her tort claims. What Adams is referring to as a “reservation of claims” is the following language in the settlement agreement, stating that after certain work and testing had been completed, that Adams would “dismiss the entire operative complaint with prejudice and without more from the Defendants and shall execute release of all Defendants from any further liability to her for any remaining claims now being made by Plaintiff.” She also relies on language in the release stating that Adams did not release the association for “ongoing claims pertaining to the repairs and remediation of her home and property.”

Adams asserts these “reserved claims” included negligence, breach of fiduciary duty, nuisance, and breach of contract, but she does not cite to any portion of the record to support this. Her citations are all to the third amended complaint, not to any agreement between the parties stating what claims were “reserved.” And as we stated in *Adams IV*, Adams was to amend her complaint “to frame causes of action based on postsettlement conduct.” It is too late to relitigate this issue. Adams as much as admits

she is attempting to do so, acknowledging that she is not arguing that a fiduciary relationship arose from the settlement agreement, but that the pleadings addressed the “pre-existing” exclusive power Newport Crest held over the common areas.

Thus, the court ruled that because the case arose from “duties associated with the contract, e.g., settlement agreement.” The relationship, the court concluded, “is not fiduciary . . . it is not based on any prior homeowner association–homeowner or landlord-tenant relationship.”

We agree. “Generally, fiduciary duties owed by a homeowners association to its members are limited to those arising from its governing documents and relevant statutory requirements.” (*Golden Eagle Land Investment, L.P. v. Rancho Santa Fe Assn.* (2018) 19 Cal.App.5th 399, 425; *Ostayan v. Nordhoff Townhomes Homeowners Assn., Inc.* (2003) 110 Cal.App.4th 120, 129.)

Here, the primary and most important relationship between the parties is as two parties in a contract. The responsibilities of each party were set forth at length in the settlement agreement, and whether the settlement agreement was breached is the gravamen of this case. The allegations in the fourth amended complaint’s cause of action for breach of fiduciary duty simply re-allege the lengthy recitation of facts and assert that the relationship between the parties created a fiduciary duty on Newport Crest’s part, which was breached by its failure to complete the work set forth in the settlement agreement, among other things.

The fourth amended complaint also alleges that the settlement agreement itself created a fiduciary duty and claimed the settlement agreement “simply memorialized” the already existing duties imposed by law. But this is simply an attempt to squeeze the square peg of a tort claim into a circular hole designed for a breach of contract cause of action. There are no facts set forth in the complaint that create a fiduciary duty between the parties based on the settlement agreement itself. The allegations are entirely conclusory. The gravamen of this case, despite Adams’s

assertions to the contrary, is breach of the settlement agreement. That gave rise to a cause of action for breach of contract, but not in tort.

Adams's other arguments are all variations on the theme that any breach of the settlement agreement is also a breach of fiduciary duty, claiming that the failure to complete the work on time and Salazar's departure all constitute reasons why her tort claims were not subject to demurrer. But this simply ignores the premise that a fiduciary duty must be established by an agreement or by law. (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 221.) She offers nothing more than conclusory allegations, and accordingly, we cannot find that the court erred by sustaining the demurrer.

Further, Adams offers no argument that as of the time the demurrer was sustained, she could have amended her complaint to state valid causes of action. Accordingly, we find no abuse of discretion in failing to grant further leave to amend at that time. In reviewing the trial court's denial of a plaintiff's request for leave to amend following a sustained demurrer, we apply the more deferential abuse of discretion standard. (See *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38-39; *Canton Poultry & Deli, Inc. v. Stockwell, Harris, Widom & Woolverton et al.* (2003) 109 Cal.App.4th 1219, 1225.)

The conclusion to Adams's opening brief requests us to reverse the order on the demurrer and the motion to strike. We do not consider the court's ruling on the motion to strike, as Adams failed to offer any argument as to why it should be reversed. We treat a point not supported by reasoned argument and citations to authority as waived. (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99.)

C. Leave to Amend and the Reservation of Claims

The next section of Adams's brief is simply a muddled mess. Its heading is: "The court twice denied appellant leave to amend the complaint, and twice refused to

address the reservation of claims, all due to [Newport Crest's] perpetuation of the prejudicial classification of the case.” (Original capitalization and boldfacing omitted.) In addressing an appeal, the appellate court begins with the presumption that an order of the trial court is presumed correct and reversible error must be affirmatively shown by an adequate record. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) “When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.” (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

1. Leave to Amend

The “leave to amend” section argues that the court abused its discretion by failing to grant leave to amend the complaint on two separate occasions in 2014 and 2015. That is the entire extent of this subsection. It does not set forth each attempt to amend, explain the proposed amendments, or argue why the court’s ruling on each motion was an abuse of discretion. It offers no legal argument at all. Although this section asks us to do nothing in any event, we deem any argument waived. (*Benach v. County of Los Angeles, supra*, 149 Cal.App.4th at p. 852.)

2. Adjudication on the Reservation of Claims

Adams then jumps to her next argument, which claims the court abused its discretion in twice denying adjudication on the existence of the purported reservation of claims (discussed above in connection with the demurrer), discussing a motion in limine and a motion for summary adjudication. Again, there is no legal argument as to why the court was in error. To the extent Adams is attempting to argue the motion in limine in question was improperly granted, Adams has failed to demonstrate error. (*Ballard v. Uribe, supra*, 41 Cal.3d at p. 574.)

3. Trial Evidence Purportedly “Proved” Adams’s Claims

The next subsection claims Adams’s evidence at trial “proved” Newport Crest’s breach of fiduciary duty and related torts, without providing any record citations to the scant “evidence” listed (the entire argument is about a page long). We are unclear what Adams is arguing for here, but in any event, it is waived. (*Benach v. County of Los Angeles*, *supra*, 149 Cal.App.4th at p. 852.)

4. Proposed Amendments

Adams next “herein proposes amendments to the complaint” to reinstate her causes of action for breach of fiduciary duty and breach of the covenant of good faith and fair dealing, and to add new causes of action for conversion, private nuisance and misrepresentation. Up to the point where she cites two cases discussing those proposed new causes of action, this entire section is bereft of a single citation to legal authority.

Again, we have few words for this section other than “a muddled mess.” With respect to leave to amend the complaint, Adams has failed to set forth authority or argument supporting her contention that the court abused its discretion, and has waived any such argument. (*Jones v. Superior Court*, *supra*, 26 Cal.App.4th at p. 99.) We would say the same about the contentions with regard to the reservation of claims, except we are unclear about exactly what Adams is asking us to review or what action to take. In any event, there is no legal argument supported by authority. (*Ibid.*) The last two sections are simply assertions and/or arguments that are supported by nothing and are neither here nor there, and warrant no action by us.

D. Motions in Limine

Adams next argues that the court’s rulings on various motions in limine “eviscerated” her case on contract damages and harmed the case in other ways. “Trial court rulings on the admissibility of evidence, whether in limine or during trial, are

generally reviewed for abuse of discretion. [Citation.]” (*Pannu v. Land Rover North America, Inc.* (2011) 191 Cal.App.4th 1298, 1317.)⁴ “A judgment of the trial court may not be reversed on the basis of the erroneous admission of evidence, unless that error was prejudicial. (Code Civ. Proc., § 475.)” (*Grail Semiconductor, Inc. v. Mitsubishi Electric & Electronics USA, Inc.* (2014) 225 Cal.App.4th 786, 799.) “The record must show that the appellant ‘sustained and suffered substantial injury, and that a different result would have been probable if such error . . . had not occurred or existed. There shall be no presumption that error is prejudicial, or that injury was done if error is shown.’ [Citation.] Additionally, article VI, section 13, of the California Constitution provides that a judgment may not be set aside based on the erroneous admission of evidence ‘unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.’ Evidence Code section 353 reinforces that provision: we may not reverse a judgment ‘by reason of the erroneous admission of evidence unless . . . [¶] . . . [¶] . . . the error or errors complained of resulted in a miscarriage of justice.’ [Citation.]” (*Ibid.*)

In this section of her opening brief, while Adams does state (or we can otherwise determine) which motion in limine she is referring to, her discussions mostly fail to include a legal argument on abuse of discretion or to explain why the error was reversible as a miscarriage of justice.

In her reply brief, for the first time, Adams discusses prejudice as to all the court’s purported errors as a general matter, but as we mentioned *ante*, it is inappropriate to offer this argument for the first time where Newport Crest had no chance to respond to

⁴ Adams argues the standard of review on all of the motions in limine is *de novo*, claiming the only issues are issues of law. But her argument on this point does not explain why the particular motions in question all involve determinations of law rather than evidentiary rulings; she simply asserts that as a fact and provides string citations, rather than applying the law to the instant facts.

it. Even in her reply brief, she offers no legal argument as to why the error was so egregious that it constituted a miscarriage of justice.

Other arguments lack any kind of legal analysis and simply assert error occurred in a conclusory manner. Our scope of review is limited to issues that have been adequately raised and are supported by analysis. (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.) Accordingly, we deem her arguments on the motions in limine waived, as we will explain below. (See *Schubert v. Reynolds, supra*, 95 Cal.App.4th at pp. 108-109.)

1. Smith Invoices

Adams first asserts the court erroneously allowed Newport Crest to introduce Smith's invoices for pre-settlement work. This is clearly an evidentiary issue, reviewed for abuse of discretion, and Adams offers no argument regarding prejudice or reversal. This issue is waived. (*Schubert v. Reynolds, supra*, 95 Cal.App.4th at pp. 108-109.)

2. Measure of Damages

Adams's next argument addresses multiple motions in limine relating to the measure of damages, which she unfortunately treats as if it were a single entity. She often fails to address exactly which motion she is referring to, to explain what was sought in the motion, or to address why the court erred.

Adams first complains the court excluded evidence that the home was eventually foreclosed upon. This is an evidentiary issue, and without an argument about prejudice, it is deemed waived. (*Schubert v. Reynolds, supra*, 95 Cal.App.4th at pp. 108-109.)

Next she argues the court "imposed an unworkable measure of damages" but she does not identify the motion in limine to which she is referring. She cites us to

the minute order addressing *all* of the motions in limine, 41 pages of argument in the reporter's transcript, a bench brief submitted much later, and a jury instruction. But she does not cite us to the motion, the opposition to the motion, the argument on this particular motion, or the court's ruling. There is nothing for us to review.

Adams moves on to the exclusion of her expert's evaluations, but once again, offers no legal argument on prejudice or miscarriage of justice. This issue is waived. (*Schubert v. Reynolds*, *supra*, 95 Cal.App.4th at pp. 108-109.)

3. Personal and Business Property

The next section of Adams's brief claims the measure of damages for loss of her personal and business property ignored the facts. She complains the court excluded several items of evidence, including a chart that set forth research into fair market value. Again, without an argument on prejudice, this issue is deemed waived. (*Schubert v. Reynolds*, *supra*, 95 Cal.App.4th at pp. 108-109.) She also complains the court sustained Newport Crest's objection to this subject during testimony, but once again fails to offer a legal argument, claiming only that "[t]he result was inadequate contract damages."

4. Collections Case

Adams next argues the court erred by granting a motion by Newport Crest to exclude evidence of a related collections case. She again argues no legal argument regarding error, prejudice, or miscarriage of justice. The issue is waived. (*Schubert v. Reynolds*, *supra*, 95 Cal.App.4th at pp. 108-109.)

5. Special Damages

The last argument in this section of Adams's brief, contending that she should have been awarded special damages, also lacks any legal argument regarding

prejudice or miscarriage of justice, and is, accordingly, waived. (*Schubert v. Reynolds, supra*, 95 Cal.App.4th at pp. 108-109.)

E. Trial Issues

Next, Adams broadly claims “the trial proceedings gave further rise to inadequate damages.” Again, most of these short arguments in Adams’s opening brief include no legal argument and no argument regarding prejudice. ““The burden is on the appellant in every case to show that the claimed error is prejudicial”” (*In re Marriage of McLaughlin* (2000) 82 Cal.App.4th 327, 337.)

1. Read Back of Closing Argument

Adams’s first contention is that the court erred by declining the jury’s request seeking a read back of part of her counsel’s closing argument. She cites no legal authority to support her claim this was legally required; indeed, section 614 states that “testimony” may be read back to the jury upon request, not argument. In any event, without citation to authority or an argument regarding prejudice mandating reversal, this issue is waived. (*County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 591; *In re Marriage of McLaughlin, supra*, 82 Cal.App.4th at p. 337.)

2. Loss of Income Instruction

Next, Adams argues she should have been entitled to loss of income damages resulting from Newport Crest’s withholding of her *business* property. She refers us to two mentions in the reporter’s transcript, both of which refer to *personal* property:

“[Counsel:] There is loss of value to her business and personal property.

“[The Court]: Those are two separate things?

“[Counsel:] Well, she had baubles and stuff like that.

“[The Court]: Loss of value to personal property.

“[Counsel:] Yeah.

“[The Court]: What’s next?”

Thus, while counsel originally mentioned business property, he quickly agreed that it was personal property at issue. The next cited portion of the record also refers to personal property:

“[Counsel:] But she’s not asking for loss of use of her residential property during that period of time. She’s talking loss of use of her personal –

“[The Court]: Personal property.

“[Counsel:] Yeah.

“[The Court]: Okay. Thank you.”

Adams argues the court later “stated she had not” advised the court she was pursuing such damages. This does not accurately reflect the record either. When counsel stated: “[W]e have always maintained [lost profits were an item of damage] she should . . . recover,” the court asked why Adams had not put on evidence of this during direct examination. Counsel replied that he had attempted to, but numerous objections were sustained. The court asked if counsel had ever, including on that day, submitted a jury instruction for lost profits (CACI No. 3903N). Counsel responded: “I’m not certain.” Thus, Adams argument on this point in her brief is at best a half-truth.

Despite what counsel told the court at the time, Adams points to an undated proposed instruction on damages that the court refused which stated: “The following are the specific items of damages claimed by plaintiff: Plaintiff seeks damages for her business and personal property in two forms: [¶] (1) loss and/or destruction of personal

property; [¶] And [¶] (2) loss of use of her property for the five (5) years it was held in storage.” This includes no mention of lost profits.⁵

Thus, we do not even have the alleged instruction the court refused to give before us. We also have no legal argument about why that instruction was appropriate and no analysis of prejudice under *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 580-581. We find no error.

3. *Property Loss Instruction*

Adams’s next argument is also about a jury instruction, this one about the court’s failure to give the real property damage instruction set forth in CACI No. 3903F. She claims this instruction was rejected, but does not point us to the actual instruction in the record. Newport Crest asserts that both parties requested CACI No. 3903F and it was used at trial, but also provides no record reference. Adams disputes this in her reply brief, but again, provides no record citations to support her claim. In short, it is unclear to us whether the instruction was given or not.

In any event, the three-paragraph argument on this point in Adams’s opening brief includes no legal argument, no citations to the relevant portions of testimony supporting her claim of instructional error, and again, no analysis of prejudice under the factors set forth in *Soule v. General Motors Corp.*, *supra*, 8 Cal.4th at pages 580-581. The issue is waived for failure to cite to the record and failure to offer necessary legal arguments. (*County of Sacramento v. Lackner*, *supra*, 97 Cal.App.3d at p. 591.)

⁵ Adams also claims that “[t]here were several rounds of disputed Instructions, some of which made it into the record, many not.” It is the responsibility of the parties to ensure that an adequate record is made.

4. Vague Evidentiary Errors

The next purported error is the rather amorphous claim that “essential elements of the story were suppressed, leaving the jury with unworkable jury instructions.” (Original capitalization and boldfacing omitted.) She claims the full timeline of the claim was never revealed, refers to unspecific errors with respect to the motions in limine and evidentiary rulings, all in an argument of less than three full paragraphs. There is simply nothing for us to review here; the argument is simply too general, and lacks any legal argument or analysis of prejudice or miscarriage of justice.

5. Additional Evidentiary Errors

This is the entirety of Adams’s argument on this point in her opening brief: “The 2016 court made several errors on evidentiary issues regarding Appellant’s mitigation and other costs. The court repeatedly sustained [Newport Crest’s] objections before Appellant could explain admissibility. The full costs were absent from the award.” The only citations are to Adams’s own argument in her motion for new trial.

To successfully appeal evidentiary errors, the party seeking reversal must first address the specific objections with citations to the record. The appellant cannot simply expect the appellate court to search the reporter’s transcript to divine what they are referring to without record references. Further, the appellant must “present argument and authority on each point made” (*County of Sacramento v. Lackner, supra*, 97 Cal.App.3d at p. 591; Cal. Rules of Court, rule 8.204(a)(1)(B)), and cite to the record to direct the reviewing court to the pertinent evidence or other matters in the record that demonstrate reversible error (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115; Cal. Rules of Court, rule 8.204(a)(1)(C)). And at the risk of repeating ourselves, evidentiary errors are not reversible absent a demonstration of prejudice and a resulting miscarriage of justice. (*Grail Semiconductor, Inc. v. Mitsubishi Electric & Electronics*

USA, Inc., supra, 225 Cal.App.4th at p. 799.) Any evidentiary issues Adams intended to raise here are waived.

F. New Trial Motion

Adams next claims the trial court erred by denying her motion for new trial because substantial evidence did not support the “grossly inadequate damages.” (Original capitalization and boldfacing omitted.) The standard of review from denial of a motion for a new trial is abuse of discretion. (*Garcia v. Rehrig Internat., Inc.* (2002) 99 Cal.App.4th 869, 874.) “A trial court has broad discretion in ruling on a motion for a new trial, and there is a strong presumption that it properly exercised that discretion. ““The determination of a motion for a new trial rests so completely within the court’s discretion that its action will not be disturbed unless a manifest and unmistakable abuse of discretion clearly appears.”” (*People v. Davis* (1995) 10 Cal.4th 463, 524.) “An abuse of discretion occurs if, in light of the applicable law and considering all of the relevant circumstances, the court’s decision exceeds the bounds of reason and results in a miscarriage of justice.” (*Fassberg Construction Co. v. Housing Authority of City of Los Angeles* (2007) 152 Cal.App.4th 720, 752.)

1. Overwhelming Trial Evidence and Legal Errors

Despite the claim of “overwhelming” evidence and legal errors, Adams cites to precious little of that evidence in her opening brief. Her entire argument on this point is less than two pages long. This appears to argue, although frankly it is unclear, that the jury’s decision to award nothing for damage to her real property was not supported by substantial evidence, and the trial court’s failure to recognize that in the context of a motion for new trial was an abuse of discretion.

“When a party challenges the jury’s findings based on insufficient evidence to support those findings, we apply the substantial evidence standard of review.

[Citations.] In applying this standard of review, we ‘view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor’ [Citation.]” (*Zagami, Inc. v. James A. Crone, Inc.* (2008) 160 Cal.App.4th 1083, 1096.) A party “raising a claim of insufficiency of the evidence assumes a ‘daunting burden.’ [Citation.]” (*Whiteley v. Philip Morris Inc.* (2004) 117 Cal.App.4th 635, 678.)

“A party who challenges the sufficiency of the evidence to support a finding must set forth, discuss, and analyze *all* the evidence on that point, *both favorable and unfavorable.*” (*Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218, italics added.) Appellants’ “fundamental obligation to this court, and a prerequisite to our consideration of their challenge” (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 737-738), is to “set forth the version of events *most favorable to [respondent]*” (*ibid.*, italics added). “The duty to adhere to appellate procedural rules grows with the complexity of the record.” (*Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal.App.4th 278, 290.) “Accordingly, if, as defendants here contend, ‘some particular issue of fact is not sustained, they are required to set forth in their brief *all* the material evidence on the point and *not merely their own evidence.* Unless this is done the error is deemed to be waived.’” (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.)

Needless to say, Adams’s two-page argument does not come anywhere close to analyzing “all” of the evidence, and we could deem this issue waived on those grounds alone. But for the sake of argument, her evidence is this: Newport Crest never had a scope of work prepared under the settlement agreement, Newport Crest provided an estimate of approximately \$200,000 on what she calls “pre-Agreement costs.” This figure was submitted to the jury, and the jury did not award real property damages.

Ruling on the motion for new trial, the court found that while this evidence could have been enough for the jury to award damages, “the evidence plainly did not

mandate such an award. In the special verdict, the jury found that the Association had breached the settlement agreement, but there was no specific finding as [to] what the breach was.” Adams argues that the jury’s finding that she was entitled to additional displacement checks, that Newport Crest did not do all the significant things it was required to do under the settlement agreement, means that the jury *must* have found there was a breach with regard to real property damage, without any plausible explanation as to why the jury awarded nothing when plainly and specifically asked this question on the verdict form. She also offers no legal argument as to why the jury could not have reached any other conclusion.

Adams also states there was “[c]onclusive evidence . . . established through testimony” on this point, without citing to any of it. We conclude Adams has failed to demonstrate error on this point. (See *Ballard v. Uribe*, *supra*, 41 Cal.3d at p. 574.)

2. Disregard of the Logical Evidence

In another two-page argument, Adams next appears to address the evidence of mitigation damages, claiming that although she paid a total of \$41,732.98 in mitigation costs, the jury awarded \$30,699. She cites only to the evidence she presented on this point; she does not say if Newport Crest contested these amounts. She claims this was a “miscalculation” attributable to the court’s refusal to permit a read back of her counsel’s closing argument (addressed *ante*), but offers no evidence to support this assertion.

Adams claims she is due the following: \$4,009.30 (ProPhoto); \$6,424.68 (Tustin Storage), and \$600 (Crown Construction). In response, Newport Crest asserts the jury awarded the exact amount payable to four different persons and entities in mitigation costs under the “mitigation and investigation” line on the special verdict form. It claims that it appears Adams was compensated for the Tustin Storage costs via the \$6,400 award for loss of personal property, and for the ProPhoto cost via the \$4,000 awarded for damage or destruction to personal property. This is certainly a logical extrapolation

based on the jury's award and the closeness of the amounts awarded to the amounts claimed (with the difference being de minimis).

The only remaining item of damage Adams claims is the \$600 she allegedly paid to Crown Construction. The evidence she points to is a "Home Improvement Proposal & Contract." This document states the "total price" for the proposed repairs would be \$6,000, with \$600 due as a down payment and \$600 due at completion. While it is signed by a representative of Crown Construction, the proposal does not include Adams's signature. Nor does Adams point to any testimony or documents that support the work was done or that she actually paid any amount to Crown Construction. Given that the burden of demonstrating inadequate damages is squarely on her, we find no error.

G. Sanctions

As noted above, the record in this case, designated by Adams, was voluminous – over 15,000 pages of clerk's transcript, plus another 1,400 pages of reporter's transcript, which comprised over 60 volumes total. On November 1, 2018, in compliance with the procedural requirements set forth in *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, we directed Adams to show cause why this court should not, on its own motion, impose sanctions for violating California Rules of Court, rule 8.276(a)(2), for "[i]ncluding in the record any matter not reasonably material to the appeal's determination."

Much of the clerk's transcript Adams designated was obviously unnecessary. As we stated in the OSC, she included entirely irrelevant documents that "*include, but are not limited to*, a motion to disqualify a trial judge, several substitutions of attorney, numerous unnecessary proofs of service, status conference filings, miscellaneous orders, proposed but unsigned orders, irrelevant stipulations, ex parte motions, requests for judicial notice, a summary judgment motion and its voluminous

attendant declarations, separate statements, and exhibits.”⁶ (*Italics added.*) As we further noted, “These documents are either mentioned in passing in Adams’s briefs, or not at all.” As much as two-thirds of the clerk’s transcript, which exceeded 15,000 pages, was designated unnecessarily.

Adams claims she was assisting her attorneys with the designation of the record. Adams’s explanation for the unnecessarily enormous clerk’s transcript is, in sum, that she thought it was better to overdesignate than underdesignate. Adams stated that she could not use the superior court’s online access to preview documents without purchasing it, which she could not afford. Even taking this at face value, it does not explain why, for example, the motion to disqualify a judge was included. She also does not explain why she could not have gone to the clerk’s office to review the record, or why she did not have access to the original documents, from either her own files or from trial counsel. Adams and her counsel suggest that they could not remember the case’s history, and instead of refreshing their memories, included thousands of extra documents.

Given that she was granted a fee waiver on appeal,⁷ it seems to us that the more likely explanation is that neither Adams nor her counsel wished to spend time going through the superior court file to make meaningful and careful choices about what to designate and what to omit. Such decisions are an important part of appellate counsel’s role, and are undertaken routinely when a client has to pay for the record they choose to designate. Here, the superior court’s fee to prepare the designated record was \$7,517.50, and Adams received a free copy of the record due to the fee waiver. Newport Crest, rather than paying this amount, reviewed the designated record and copied only those

⁶ We highlight “include, but are not limited to,” because Adams’s response to the OSC mistakenly appears to believe this was an exhaustive list. It was not, and our order did not say otherwise. We merely listed the most obvious unnecessary documents.

⁷ While the facts and documents supporting a fee waiver application are confidential, the fact that a waiver was granted is not. (Gov. Code, § 68633, subd. (f).)

documents they deemed relevant, which was 4,593 pages – approximately one-third of the total clerk’s transcript designated by Adams.

Fee waivers are designed to ensure equal justice under the law. (Gov. Code, § 68630.) They were never intended to permit parties or counsel to circumvent their obligations to comply with the California Rules of Court. Those rules exist for good reason; dealing with an overly voluminous record imposes hardship on the other party, the superior court, and this court. It makes the appeal more expensive, time consuming, and difficult.

Adams and her counsel both admit their grievous error and apologize to this court. Adams also apologizes to Newport Crest, which incurred additional attorney fees when deciding which part of the enormous record to copy. Thus, given the overall circumstances and facts, we exercise our discretion not to impose sanctions in this case. Adams and her counsel should take note that this court will not be so benevolent if California Rules of Court violations occur in the future.

III

DISPOSITION

The judgment is affirmed. Newport Crest is entitled to its costs on appeal.

MOORE, ACTING P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.